IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.278 OF 2004..

IN

SUMMARY SUIT NO.3762 OF 2003

Jagruti A.Kamdar .. Plaintiff

versus

Vipul Chheda .. Defendant

...

Ms.Sheetal Sharma i/b Dave & Co for Plaintiff

Mr.Nitin Trivedi for Defendant.

CORAM : D.G. KARNIK, J

DATED : 23rd February, 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff lent and advanced to the defendant a sum of Rs.1,00,000/- with interest at 1.25 p.a. According to the plaintiff the defendant made part payument of Rs.48,000/- and did not pay the balance amount. The plaintiff has therefore filed this suit for recovery of the balance amount.

2. The defendant by filing an affidavit in reply has denied the liability. He has admitted to have taken

loan of Rs.1,00,000/-. He however states that he was indebted to many persons and therefore a compromise/settlement was arrived at by the creditors under which he agreed to pay 48% of the dues to each of the creditors which was agreed. According to defendant, he also paid Rs.48,000/- to the plaintiff. The defendant has annexed as Exhibit A to the affidavit in reply the receipt issued by the plaintiff in the sum of Rs.48,000/-. At the bottom of the receipt the representative of the plaintiff has signed the receipt in full and final settlement of the claim. Learned counsel for the plaintiff states that the representative had no authority to enter into this compromise. This is matter of details and would require trial. The receipt of money is admitted . Cheque has been encashed. In the circumstances defence raised by the defendant that Rs.48,000/- was received by the plaintiff in full and final settlement needs to be considered at the hearing of the suit. The defence cannot be said to be illusory or moonshine. In the circumstances, the defendant is granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendant to file the written statement within a period of four weeks.

D.G.KARNIK, J